

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

In Re: FEMA TRAILER  
FORMALDEHYDE PRODUCTS  
LIABILITY LITIGATION

MDL NO. 07-1873

SECTION "N" (5)

THIS DOCUMENT RELATES TO  
Member Case No. 09-8630  
*Helmsetter et al v. Forest River, Inc., et al*

**ORDER AND REASONS**

Before the Court is "Forest River, Inc.'s Motion to Dismiss for Failure to Comply with Pre-Trial Order Nos. 2 & 32 Relating to Plaintiff Fact Sheets" (Rec. Doc. 25199).

Forest River seeks to dismiss the claims of Paula Helmsetter for failing to provide a plaintiff fact sheet ("PFS") as required under Pretrial Orders Nos. 2 and 32. Forest River asserts that counsel for Ms. Helmsetter, Mr. Frank D'Amico, Jr., has stated via email that he does not represent Ms. Helmsetter and therefore can neither provide her PFS nor consent to her dismissal. Forest River's motion is denied for two reasons.

First, Mr. D'Amico filed a complaint on behalf of Ms. Helmsetter and remains enrolled as her counsel of record. Thus, in this Court, Mr. D'Amico continues to represent Ms. Helmsetter's interests and will continue to do so until such time as this Court relieves him of this obligation. Given the apparent questions surrounding the status of Ms. Helmsetter's legal

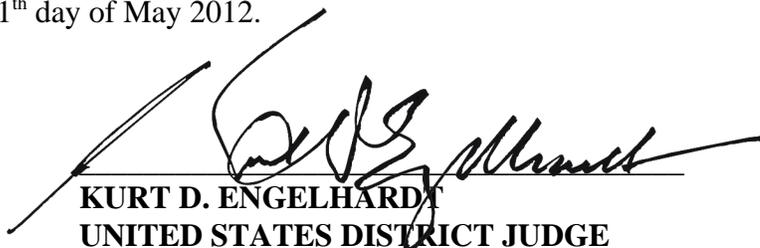
representation, the Court is unable to find the requisite delay or contumacious conduct necessary for dismissal under either Rule 41(b) or Rule 37(b)(2). *See Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5<sup>th</sup> Cir. 1992); *FDIC v. Conner*, 20 F.3d 1376, 1380 (5<sup>th</sup> Cir. 1994).

Second, and equally important, the MDL phase of this litigation is near its end. This individual member case has been severed for trial and is subject to full discovery. Given this procedural posture and the additional circumstances discussed above, the Court finds that it would be inappropriate to dismiss this plaintiff's claims based on an MDL procedure that has served its purpose. Forest River is free to serve normal discovery requests and file any necessary motions to compel with the Magistrate Judge.

Accordingly,

**IT IS ORDERED** that “**Forest River, Inc.’s Motion to Dismiss for Failure to Comply with Pre-Trial Order Nos. 2 & 32 Relating to Plaintiff Fact Sheets**” (Rec. Doc. 25199) is hereby **DENIED**.

New Orleans, Louisiana, this 11<sup>th</sup> day of May 2012.

  
KURT D. ENGELHARDT  
UNITED STATES DISTRICT JUDGE